

IN THE FOURTH DISTRICT COURT OF THE STATE OF UTAH IN
AND FOR UTAH COUNTY.

PROVO RESERVOIR COMPANY,
a corporation,

Plaintiff,

-vs-

PROVO CITY, et al, including
PROVO BENCH CANAL AND IRRIGA-
TION COMPANY, a corporation,
the Petitioner, JOHN D. DIXON,
CALEB TANNER and ESTHMA TANNER,

Defendants.

PETITION OF PROVO BENCH
CANAL AND IRRIGATION
COMPANY FOR SUPPLEMENTAL
DECREE.

#2888

Petitioner hereby sets forth and alleges:

1-

That the petitioner now is and at all times herein-
after mentioned has been a corporation duly existing under and
by virtue of the laws of the State of Utah, and that petitioner
and the above named John D. Dixon, Caleb Tanner, Esthma Tanner
were all parties defendant in the above entitled action.

2-

That the defendant, John D. Dixon, in paragraph 28
of the Decree entered in the above entitled cause was awarded and
decreed 2.52 second feet of the waters of the Provo River to be
diverted at and near the mouth of Provo Canon, and said paragraph
28 of the Decree in said cause is as follows, to wit:

"John D. Dixon

From January 1st to December 31st.

As successor in interest to J. H. Snyder, Joshua
J. Mecham, John W. Hoover, and Hyrum Heiselt to
2.80 second feet of water which was appropriated
upon lands in Provo Canyon, the place of use and
the point of diversion having been changed and
the said water is now being used upon lands below
the mouth of Provo Canyon, and the point of diver-
sion from Provo River is now at and near the mouth
of Provo Canyon, Utah County, Utah, and said use
may be continued and the quantity to which the said
defendant is entitled at his said point of diversion,
at and near the mouth of Provo Canyon, is 2.52 sec-
ond feet, the same being of the transferred water
rights referred to in subdivision (a) paragraph
33 hereof.

That the defendant, Esthma Tanner, in paragraph 31 of the decree filed in the above entitled cause was awarded the following seepage waters, to wit:

"Esthma Tanner

That seepage and spring water accumulating and arising upon her land, and collected by her in the drainage system laid upon said land situated about five miles from the mouth of Provo Canyon, and she is entitled to discharge said water into Provo River and to take from said river an equal amount at the intake of the Provo Bench Canal, so long, and so long only, as the requirements of the users of water from Provo River diverting the same at points below the point of discharge of such drainage water in the said river are not supplied from seepage water, but require the turning down of water from the main flow of the river; and the said Esthma Tanner is entitled to take from said river at the said intake of the Provo Bench Canal, such quantity of water only as is required to be turned down for such lower diversions not exceeding, however, the quantity of water discharged by her into the river from said drainage system.

4-

That petitioner is informed and believes, and therefore alleges that after the filing of the final decree in the above entitled cause, to wit, on or about the _____ day of _____, 192_, said defendant, Esthma Tanner, conveyed and transferred to Caleb Tanner all of the water rights decreed to her in paragraph 31 of the Decree hereinabove referred to and set forth.

5-

That on or about the 6th day of January, 1919, an agreement was entered into between the defendant, John D. Dixon, and the defendant Caleb Tanner wherein said John D. Dixon conveyed to said Caleb Tanner all of the water rights awarded to the said John D. Dixon in paragraph 28 of the Decree in the above entitled cause in exchange for the water rights awarded to the defendant Esthma Tanner by paragraph 31 of said Decree; but that the said John D. Dixon in said agreement reserved the right to the use of one half of the water right decreed to him in said paragraph 28 of said Decree hereinafter and for such time as the flow of water from the Esthma Tanner lands decreed in paragraph 31 of said

Decree, was interrupted so that they could not be used and diverted, as provided in said agreement, and said agreement by the defendant John D. Dixon and Caleb Tanner was thereafter duly recorded in Book 194 of Mtgs. at Page 412 of the Records of the County Recorder of Utah County, Utah, and the same is herein set forth in full, as follows, to wit:

"Entry No. 9440 Filed Nov. 7, 1919 at 3 P. M. in Book 149
Page 412. -----

AGREEMENT

This agreement made and entered into this 6th day of January A. D., 1919, between John D. Dixon, party of the first part. Caleb Tanner, party of the second part,, both of Provo, Utah, WITNESSETH:

1. That in consideration of the mutual advantages to the parties hereto, the party of the first party hereby assigns and transfers to Caleb Tanner all his right, title and interest and property in and to all the primary water right awarded to John D. Dixon by the District Court of Utah County in Civil Action #2888 and all his interest and property in and to that certain application #2134 of the files of the State Engineer of the State of Utah to appropriate water from Provo River, together with:

2. Six tenths (6/10) of the interest of said John D. Dixon in that certain agreement between the North Union Irrigation Company of Linden, Utah County, Utah, party of the first part and Joseph R. Murdock of Heber, Wasatch County, Utah, and John D. Dixon of Provo, Utah County, Utah, parties of the second part which provides for the enlargement of the North Union Canal; and

3. Six tenths (6/10) of the interest of said John D. Dixon in the certain agreement between Caleb Tanner, party of the first part and Joseph R. Murdock and John D. Dixon parties of the second part which provides for the enlargement of the Provo Bench Canal, the same having been duly signed on the 15th day of December, 1917.

4- Now in consideration whereof the said Caleb Tanner shall deliver at the intake of the Provo Bench Canal for the use and benefit of the said John D. Dixon, a volume of flow of water equal to one half ($\frac{1}{2}$) of the volume of flow to which said John D. Dixon would be entitled to divert from Provo River near the mouth of Provo Canyon by virtue of the Primary Water Right aforesaid, the same to be supplied from the drainage system laid in the lands of Es-thma Tanner and in the manner provided by the decree of the Court in said Civil action #2888 above.

5. John D. Dixon reserves the right to have one half ($\frac{1}{2}$) the primary water right specified in paragraph one (1) hereof flow down to the intake of the Provo Bench Canal for his use and benefit whenever and for such time, as the flow of water to the intake of the Provo Bench Canal for the use and benefit of John D. Dixon as provided in paragraph four (4) as interrupted.

In witness whereof the parties hereto have set their hands this 6th day of January, A. D. 1919.

Karl Bandleley

John D. Dixon
Party of the first
part

Caleb Tanner
Party of the second
part.

State of Utah)
 * SS
County of Utah)

On the 18th day of January 1919, personally appeared before me, a Notary Public in and for the County and State aforesaid, John D. Dixon and Caleb Tanner, the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

My Commission expires
July 9th, 1921 (SEAL)

LeRoy Dixon
Notary Public"

6-

That on or about the _____ day of February, 1923, the defendant, John D. Dixon, entered into an agreement with the petitioner by the terms of which agreement said defendant John D. Dixon agreed to convey and transfer to petitioner all of the rights received from Caleb Tanner under the agreement hereinabove in the preceeding paragraph set forth, including the reservation to the use of the original waters described in paragraph 28 of said decree, in case of the failures of drainage water described in paragraph 31 of said Decree and said agreement was in the form of a deed for said waters, ~~a copy of which is hereunto annexed, marked Exhibit "A" and hereby referred to and made a part of this petition.~~

7-

That under the provisions of the Decree filed in the above entitled court, the court retains jurisdiction of this case and the subject matter thereof, and of all the parties thereof, their successors and assigns from time to time, making such further orders, rules and regulations as are necessary for the regulation, control and distribution of said waters, according to the terms of this Decree; and in order for the commissioners to be properly advised of the transfers hereinbefore set forth and alleged and to protect the interest of the petitioner and other parties hereto, and in order that there may be no question as to whether said transfers are valid and good and substantial conveyances of

the rights attempted to be set forth therein, petitioner alleges that it is necessary that the court pass upon said transfers and decree the exchanged rights herein set forth as now being vested in said petitioner; and that it is further necessary for a supplemental decree to be entered herein in order that the commissioner who acts under the provisions of the Decree shall have full and due notice of said exchange rather than be required to rely upon the public records therefore.

WHEREFORE, petitioner prays that an order of this Court issue forthwith requiring the above named defendants, John D. Dixon, Caleb Tanner and Esthma Tanner to appear before said Court on Monday the 2d day of April, 1923, at the hour of 2:00 o'clock P. M., or as soon thereafter as counsel can be heard and show cause, if any they have, why a supplemental Decree of this Court should not enter in the above entitled cause decreeing and awarding to petitioner, Provo Bench Canal and Irrigation Company, the waters set forth and described in plaintiff's Exhibit "A" attached hereto, including the reservation mentioned therein to waters originally decreed by paragraph 23 of the decree herein.

Petitioner prays for such other relief as may be meet and equitable in the premises.

HATCH & PORTER

By Chase Hatch
Attorneys for Petitioner.

STATE OF UTAH ()
COUNTY OF UTAH () SS

Ray V. Wentz, being first duly sworn, deposes and says: That he is an officer of the above named petitioner, Provo Bench Canal and Irrigation Company, to wit, a director thereof; and as such he is familiar with the business and affairs of said corporation; that he has read the above petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to those he believes it to be true.

Subscribed and sworn to before me this 22 day of March, 1923.

My Commission expires: Dec. 31, 1926

Chase Hatch
Notary Public
Residing at Provo, Utah